IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2015-WC-01760-COA

BETTYE LOGAN **APPELLANT**

v.

KLAUSSNER FURNITURE CORPORATION D/B/A BRUCE FURNITURE INDUSTRIES AND AMERICAN CASUALTY COMPANY OF READING, PA **APPELLEE**

DATE OF JUDGMENT:	10/23/2015
TRIBUNAL FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	ROY O. PARKER HALEY WADE MCINGVALE II
ATTORNEYS FOR APPELLEE:	AMY LEE TOPIK JOSEPH ANTHONY GERACHE III
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIBUNAL DISPOSITION:	AFFIRMED THE ADMINISTRATIVE JUDGE'S DECISION THAT CLAIMANT WAS NOT ENTITLED TO PERMANENT-TOTAL DISABILITY BENEFITS FOR THE MAXIMUM ALLOWED AMOUNT OF 450 WEEKS
DISPOSITION:	REVERSED AND REMANDED - 11/15/2016
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE IRVING, P.J., CARLTON AND GREENLEE, JJ.

GREENLEE, J., FOR THE COURT:

¶1. This is an appeal from a decision of the Mississippi Workers' Compensation Commission in which Bettye Logan was found to have incurred a permanent-partial disability with a sixty-percent industrial loss of use of her left lower extremity stemming from an admittedly work-related injury. Logan appealed the decision of the Commission to

this Court, claiming that she is entitled to the maximum allowable amount of permanent-total disability under the law instead of the lower amount awarded by the Commission. This is the second appeal this Court has heard stemming from Logan's workers' compensation claim for disability benefits. In *Logan v. Klaussner Furniture Corp.*, 127 So. 3d 1138 (Miss. Ct. App. 2013) (*Logan I*), we held that (1) there was a loss of wage-earning capacity, and (2) the injury was permanent, *Id*. at 1142-43 (¶¶20-21), and remanded the case to the Commission for further proceedings consistent with the Court of Appeals' decision. *Id*. at (¶23). Because the Commission's subsequent decision did not comport with our findings in *Logan I*, we reverse and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

¶2. Logan was employed by the Klaussner Furniture Corporation d/b/a Bruce Furniture Industries (Klaussner). On October 9, 2003, Logan was injured when her foot became caught in some fabric fibers at work, causing her to fall. Logan filed a petition to controvert with the Commission on December 9, 2004, and a hearing was held on August 12, 2010.

¶3. On July 29, 2011, the administrative judge (AJ) entered an order finding that Logan had not suffered any industrial loss of use to her left lower extremity. Logan then filed a petition for review before the full Commission. On February 6, 2012, the full Commission affirmed the decision of the AJ.

¶4. Logan appealed to this Court, and on June 4, 2013, we reversed and remanded the decision of the Commission in *Logan I*, where we found that (1) Logan had suffered a loss of wage-earning capacity, and (2) the evidence supported a finding of permanent-partial

disability or permanent-total disability. *Id.* at 1142-43 (¶¶20-21).

¶5. On remand, the AJ again conducted an analysis of the prior evidence and claim of Logan rather than focusing on the findings within the opinion of the Court of Appeals. The AJ then found that Logan suffered a sixty-percent loss of industrial use to her left lower extremity. On October 23, 2015, the Commission affirmed the decision of the AJ, stating that it agreed with the AJ that Logan had the ability to return to employment at least at a sedentary level based on the medical and vocational evidence. On November 20, 2015, Logan appealed the decision of the Commission to this Court.

DISCUSSION

¶6. While there are multiple issues raised by Logan, her appeal boils down to one: whether the Commission erred by not finding that she suffered a permanent-total disability for the maximum of 450 weeks of compensable time.[1]

¶7. "The Commission's decision will be reversed only if it is not supported by substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law." *Lovett v. Delta Reg'l Med. Ctr.*, 157 So. 3d 88, 89-90 (¶7) (Miss. 2015). "If the Commission's order is supported by substantial evidence, this Court is bound by the Commission's determination, even if the evidence would convince us otherwise if we were

[1] Logan's claims were that (1) the Commission's decision was arbitrary, capricious, and contrary to the instruction of this Court, (2) the Commission erred in failing to treat her case as a loss-of-wage-earning-capacity case due to the industrial loss of use to her left lower extremity, making her totally occupationally disabled, entitling her to one-hundred-percent permanent-total disability, and (3) that her age and education entitled her to permanent-total disability.

the fact-finder." *Forrest Gen. Hosp. v. Humphrey*, 136 So. 3d 468, 471 (¶14) (Miss. Ct. App. 2014). As the fact-finder, the Commission determines issues of the credibility of the witnesses and evidence before it, and those determinations are afforded substantial deference. *Wagner v. Hancock Med. Ctr.*, 825 So. 2d 703, 706 (¶10) (Miss. Ct. App. 2002) (citing *Miss. Pub. Serv. Comm'n v. S. Cent. Bell Tel. Co.*, 464 So. 2d 1133, 1135 (Miss. 1984)). The Commission's application of law is reviewed de novo. *Lifestyle Furnishings v. Tollison*, 985 So. 2d 352, 358 (¶16) (Miss. Ct. App. 2008) (citing *ABC Mfg. Corp. v. Doyle*, 749 So. 2d 43, 45 (¶10) (Miss. 1999)).

¶8. Barring a grant of certiorari by the Mississippi Supreme Court, a question settled by the Court of Appeals should be treated as no longer open for review, and such decisions constitute a body of precedent that should be followed in subsequent cases. *See White v. Williams*, 159 Miss. 732, 132 So. 573, 575 (1931); *Moss Point Lumber Co. v. Bd. of Sup'rs of Harrison Cty.*, 89 Miss. 448, 42 So. 290, 302 (1906); Miss. Code Ann. § 9-4-3(2) (Rev. 2014).

¶9. Whether a claimant's "permanent disability is partial or total is a question of fact determined by the evidence as a whole, including both lay and medical testimony." *Howard Indus. Inc. v. Satcher*, 183 So. 3d 907, 912 (¶14) (Miss. Ct. App. 2016) (citing *McGowan v. Orleans Furniture Inc.*, 586 So. 2d 163, 167 (Miss. 1991)). When an injury is incurred under Mississippi Code Annotated section 71-3-17(c) (Supp. 2016) (permanent-partial (scheduled-member) disability) that results in a permanent loss of wage-earning capacity within section 71-3-17(a) (permanent-total disability), section 71-3-17(a) controls exclusively, and the

claimant is not limited to the number of weeks of compensation prescribed in section 71-3-17(c). *Tollison*, 985 So. 2d at 359 (¶19) (citing *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1126 (Miss. 1992)).

¶10. The Commission's finding focuses on Logan's leg as a scheduled member covered under section 71-3-17(c). As stated above, with regard to Logan's injury, we held in *Logan I* that her injury (1) was permanent, and (2) resulted in a loss of wage-earning capacity. *Logan I*, 127 So. 3d at 1142-43 (¶¶20-21). Therefore, section 71-3-17(a) controls, not section 71-3-17(c) as applied by the Commission. Thus, the Commission's decision is based on an erroneous application of law and, as such, this case must be reversed and remanded to the Commission for it to find the amount of Logan's loss of wage-earning capacity and apply that finding to two-thirds of Logan's average weekly wage on her date of injury for the maximum number of weeks of disability to which she is entitled under section 71-3-17(a), 450 weeks, as part of its determination of the amount of Logan's workers' compensation award.

CONCLUSION

¶11. We reverse and remand the finding of the Commission for further proceedings consistent with this opinion.

¶12. **THE JUDGMENT OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REVERSED, AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

LEE, C.J., IRVING, P.J., ISHEE, CARLTON AND JAMES, JJ., CONCUR. GRIFFIS, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, FAIR AND WILSON, JJ.

GRIFFIS, P.J., DISSENTING:

¶13. I find the decision of the Commission on remand is supported by substantial evidence in the record and is consistent with this Court's decision in *Logan I.* Therefore, I respectfully dissent.

¶14. In *Logan I*, we found the evidence showed Logan suffered permanent-partial disability or permanent-total disability and therefore reversed and remanded the matter to the Commission for a determination of the appropriate award of compensation. *Logan v. Klaussner Furniture Corp.*, 127 So. 3d 1138, 1143 (¶22) (Miss. Ct. App. 2013). On remand, the Commission found Logan suffered a sixty-percent loss of industrial use to the left lower extremity and awarded permanent-partial disability benefits in the amount of $331.06 per week for a period of 105 weeks, pursuant to Mississippi Code Annotated section 71-3-17(c) (Supp. 2016). Logan now appeals and argues she suffered a permanent-total disability for the maximum of 450 weeks of compensable time.

¶15. "[W]hether a claimant's permanent disability is partial or total is a question of fact determined by the evidence as a whole, including both lay and medical testimony." *Howard Indus. Inc. v. Satcher*, 183 So. 3d 907, 912 (¶14) (Miss. Ct. App. 2016). Scheduled-member injuries, such as Logan's, may result in permanent-total disability if the claimant cannot get regular employment because of the scheduled-member injury. *See Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1128 (Miss. 1992) ("Allowing compensation for a permanent partial loss of a scheduled member takes no account of a claimant's loss of wage earning capacity. If a claimant is unable to earn wages despite only a loss or loss of use of a scheduled

member, then the claimant is permanently and totally disabled.").

¶16. Here, as the Commission noted, at least two physicians, including one of Logan's treating physicians, opined Logan could return to some form of work. Although Dr. Kim Stimpson never removed Logan's light-duty work restriction, he opined that Logan reached maximum medical improvement in October 2004, and stated that based on the functional-capacity evaluation performed by Cornerstone Rehabilitation, he would have probably returned Logan to unrestricted duty. Additionally, Dr. Cooper Terry opined Logan reached maximum medical improvement as of September 2009, and assigned no permanent work restrictions. Thus, the Commission's finding that Logan has the ability to return to work is supported by substantial evidence. Accordingly, the award of permanent-partial disability benefits pursuant to section 71-3-17(c) was proper.

¶17. The majority finds that as a result of our holding in *Logan I*, Mississippi Code Annotated section 71-3-17(a) (Supp. 2016) controls, since Logan's injury was permanent and resulted in a loss of wage-earning capacity. However, section 71-3-17(a) controls only if the claimant has "sustained a *total* loss of wage earning capacity." *Smith*, 607 So. 2d at 1128 (emphasis added).[2] In *Logan I,* we did not find Logan's injury resulted in a *total* loss of wage-earning capacity within section 71-3-17(a). Moreover, nothing we said in *Logan I* required or compelled the Commission to find a *total* loss of wage-earning capacity. The Commission's finding of a sixty-percent loss of industrial use to the left lower extremity is

[2] *See also Eaton Corp. v. Brown*, 130 So. 3d 1131, 1137 (¶29) (Miss. Ct. App. 2013) ("[T]o go beyond the scheduled member benefits . . . [the claimant] must meet all the criteria necessary to establish a complete and total loss of wage-earning ability; otherwise the award should be limited to the scheduled member.").

supported by the substantial evidence.

¶18. I find the Commission's decision on remand comports with our findings in *Logan I.* There is substantial evidence in the record to support the Commission's findings and the Commission's application of section 71-3-17(c). Great deference is given to the findings of the Commission when supported by substantial evidence. *McCrimon v. Red Arrow Car Wash*, 859 So. 2d 395, 398 (¶9) (Miss. Ct. App. 2003). Thus, I would affirm the judgment of the Commission.

BARNES, FAIR AND WILSON, JJ., JOIN THIS OPINION.